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March 16, 1981, Volume X, Issue 3

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GENERAL ACCOUNTING OFFICE

Federal tax laws discourage U.S. companies with substantial overseas operations from employing U.S. citizens abroad according to a recent GAO report, "American Employment Abroad Discouraged By U.S. Income Tax Laws." The report found that current tax law does not fully relieve companies' workers from taxes on income that reflects the excessive costs of living and working abroad. Since the firms generally reimburse overseas workers for their additional tax burden, Americans are more costly to employ than are competing foreign nationals who generally are not taxed by their home countries. Additionally, the U.S. is the only major industrial nation that taxes the foreign source income of its citizens. Under U.S. law, base salary and certain overseas allowances are not offset by special deductions. The GAO found that most major U.S. firms surveyed operate programs to reimburse expatriate employees for additional taxes resulting from their overseas assignments. The programs are usually available to both Americans and third-country nationals, but are "significantly" more expensive for Americans. Additionally, the housing and cost-of-living deductions provided by the 1978 Foreign Earned Income Act were often "seriously inadequate" in reducing income by actual allowances. Congress should consider placing Americans working abroad on a comparable income tax basis with citizens of competitor countries who generally are not taxed on foreign earned income.

A complete exclusion or a "limited-but-generous" exclusion would do that and would be relatively simple to administer, according to the report. Copies of the report may be obtained by contacting the GAO at 202/275-6241 and requesting document ID-81-29.

SECURITIES AND EXCHANGE COMMISSION

A reduction of 159 positions and $5.7 million from the original 1982 Carter administration budget for the SEC has been proposed under a revised 1982 budget presented to the House Appropriations Committee, Subcommittee on State, Justice, Commerce and the Judiciary on 3/11/81. Philip A. Loomis, Jr., acting Chairman of the Commission, presented the revised budget which represents a 7.3% reduction in funding from the Carter budget, with the most significant reductions in staffing coming in operational rather than administrative areas. Representative Joseph D. Early (D-MA), who acted as subcommittee chairman during the hearing, expressed the opinion that administrative staff should be cut to the "bare bones" before the operational area is reduced. Mr. Early and other members of the subcommittee repeatedly questioned Mr. Loomis, as well as several division directors who were also present, as to whether the Commission could carry out its legislatively assigned functions under the budget proposal. The answer was that with budget reductions, processing would be delayed and review somewhat less in depth. Regarding an inquiry on the recent GAO report on the FCPA (see the 3/9/81 Wash. Rpt.), Mr. Loomis replied that he agreed that "further guidance" would probably be beneficial. Stanley Sporkin, Director, Division of Enforcement, indicated that the FCPA needed a "shake down" period and that while his staff is not actively seeking FCPA violations, they will fully prosecute violations they become aware of. Other areas of inquiry dealt with further implementation of the Market Oversight Surveillance System (MOSS) which will continue on a pilot project basis in 1982 at a cost of $1.5 million. The Subcommittee also questioned expenditures for the consolidation of Commission staff in one location and the allocation of ADP resources to assist the Division of Corporation Finance. The review of investment companies was also a subject of inquiry and George Kundahl, Deputy Executive Director, indicated that the seven year rotation for review would slip to 11 years under the reduced budget although money market funds would continue to be reviewed annually. Mr. Early closed with a comment that the SEC may be one of the very few under funded agencies and questioned if any real saving would be realized by budget cutting at the SEC.

TREASURY, DEPARTMENT OF

Individuals claiming an overpayment of windfall profit tax and taking the automatic two-month extension until 6/15/81 to file their 1980 returns, will not be assessed a late penalty for their individual tax liability if the balance due is paid by 6/15/81. This IRS policy "clarifies" information contained in a 2/18/81 IRS News Release (see the 2/23/81 Wash. Rpt.). In the previous announcement, the IRS stated its intention to assess the late penalty for tax liabilities. The change in this late penalty policy was first discussed during the Senate Finance Committee hearing, 3/5/81, on the nomination of Roscoe L. Egger, Jr., to become IRS Commissioner. Sen. David L. Boren (D-OK) stated that the IRS decision to assess late penalties contradicted earlier assurances given the public by the IRS in Publication 553. Mr. Egger responded that the late penalty assessment policy was the "correct position, technically," but since a different representation had been made to the taxpayers, "we are going to live with it."

In a related matter, Roscoe L. Egger, Jr., was confirmed as IRS Commissioner by a voice vote in the Senate on 3/10/81.

Pursuant to legislative mandate, the Department of the Treasury has published its complete system of records (see the 3/12/81 Fed. Reg., pp. 16460-651). The lengthy publication lists all records systems including system name, location, categories of individuals covered and type of record, authority to keep the records, routine uses, retention and disposal of records. All systems have been adopted as of 12/31/80. Since the last publication, the Department has deleted 29 systems of records, consolidated 47 systems, added two new systems and revised nine systems.

The deadline for comments on the discussion draft that presents a system for taxing foreign exchange gains and losses, issued 12/8/80 by the Carter Treasury is 5/31/81. The discussion draft is based on a Treasury study of how to tax gains and losses resulting from changes in the value of foreign currencies and on public comment received by the Treasury on its series of questions and examples on the treatment issued 4/10/80. Comments should be addressed to Joel Rabinovitz, Deputy International Tax Counsel, Treasury Department, Washington, D.C. 20220.

Non-resident aliens and foreign corporations who sold or exchanged real property in the U.S. after 6/18/80 are subject to new rules under a recent change in the tax law, according to the IRS (IR-81-25). Under a new law, non-resident aliens and foreign corporations must now treat the gain or loss from the disposition of an interest in U.S. real property as income effectively connected with a U.S. trade or business and will be taxed at U.S. rates. Additionally, non-resident aliens may be liable for a new minimum tax on the gain from the disposition of U.S. real property interests. Corporations whose tax year ended after 6/18/80 should see supplemental instructions for Forms 990T, 1120L, 1120F and 1120M. Those affected persons who have already filed will have to file amended returns.

SPECIAL: SENATE BILL ADDRESSES OFFSETTING POSITIONS IN PERSONAL PROPERTY

S. 626, a bill that "would crack down on a popular tax-shelter device known as the commodity straddle" and "the more imaginative straddles that the IRS has discovered.

in recent years" was introduced by Sen. Daniel P. Moynihan (D-NY) on 3/5/81. In his introductory remarks, Sen. Moynihan stated that this measure will have an effective date of 5/5/81 because he considers it a discussion draft and invites "anyone who wishes, to comment on it." In addition to commodity straddles, Section 1092 of the bill deals with "offsetting positions in personal property" which includes commodities, any interest bearing obligation (debt), and any other type of personal property (other than stock in a corporation). The bill was referred to the Committee on Finance, with likely referral to the Subcommittee on Taxation and Debt Management Generally. No hearings have been scheduled.

SPECIAL: AICPA FORMALLY ENDORSES H.R. 1526

The AICPA, 3/12/81, formally endorsed legislation requiring top government officials to certify the effectiveness of their agency's internal control systems. The "Federal Managers Accountability Act of 1981," H.R. 1526, requires continuing annual evaluations and reports to the Congress on the internal control systems of each Federal agency and department. The proposal, introduced by Rep. Jack Brooks (D-TX) received additional support from witnesses, including the OMB, the Association of Government Accountants, and the Institute of Internal Auditors at a 3/11/81 hearing before the House Government Operations, Legislation and National Security Subcommittee. A Senate version of the Brooks proposal is expected to be introduced in the near future.

For additional information, please contact Jim Kovakas, Gina Rosasco, Nick Nichols or Kathee Baker at 202/872-8190.

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